

EFFECTIVENESS OF THE 2009 POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPS)

**FEBRUARY 19, 2013
ITEM 5**

Cris Carrigan, Director
Office of Enforcement



Background: 2008 LAO Concerns

- **SEPs reduce funding available for Statewide projects**
- **Regions regularly permit SEPs in excess of 50% of the total assessed liability**
- **State Water Board should have a role in SEP fiscal oversight**
- **SEP data should be publicly available**
- **Address practice of holding funds for future, speculative SEPS**

6 Goals of the SEP Policy

- **Ensure Proper Use of SEP Funds**
- **Limit SEP Amounts to 50% of Total Liability**
- **Increase Accountability for Proper Allocation and Use of Funds**
- **Increase Public Reporting of SEP Status Information**
- **Increase Oversight on Placement of Settlement Funds into accounts not authorized by Statute or the State Water Board**
- **Ensure Dischargers Cover Oversight Costs of SEPs**

Overarching Goal: Improve Quality of SEPs

Goal 1

- **Ensure proper use of SEP funds**

✓ **Achieved**

- ☐ **Criteria for SEP Selection**
- ☐ **Nexus Requirement**
- ☐ **SEP Approval Process**

Criteria for SEP Selection

- **Directly benefits or studies groundwater or surface water quality or quantity**
- **Goes above-and-beyond otherwise applicable obligations of the discharger**
- **Never directly benefits, in a fiscal manner, a Water Boards' functions, members, staff, or family of members and staff**

Nexus Requirement

- **There must be a nexus between the violation(s) and the SEP**
- **SEP policy definition of “nexus”**
“a relationship between the nature or location of the violation and the nature or location of the proposed SEP”

SEP Approval Process

- Step 1: Prosecution Team (OE, RB Staff/AEOs) vets SEP proposal before presenting to Board for approval**
- Step 2: Opportunity for 30-Day public comment**
- Step 3: SEP is approved by Regional Board or Executive Officer**

Goal 2

- **Limit SEP amounts to 50 percent of total liability**

✓ **Achieved**

Goal 3

- **Increase accountability for proper allocation and use of funds**

✓ **Achieved**

- ☐ **SEP is treated as suspended liability**
- ☐ **Specific requirements for Orders containing SEPs**
- ☐ **Post-project verification requirements**

How We Are Increasing Accountability

1) SEP is treated as suspended liability

2) Specific requirements for orders containing SEPs:

- ☐ **Scope of Work**
- ☐ **Budget**
- ☐ **Performance standards**
- ☐ **Quarterly reporting on achieving performance standards**
- ☐ **Time schedule for completion**

3) Additional project verification requirements

Goal 4

- Increase public reporting of SEP status information

✓ **Achieved**

Goal 5

- **Increase oversight on placement of settlement funds into accounts not authorized by Statute or the State Water Board**

✓ **Achieved**

Goal 6

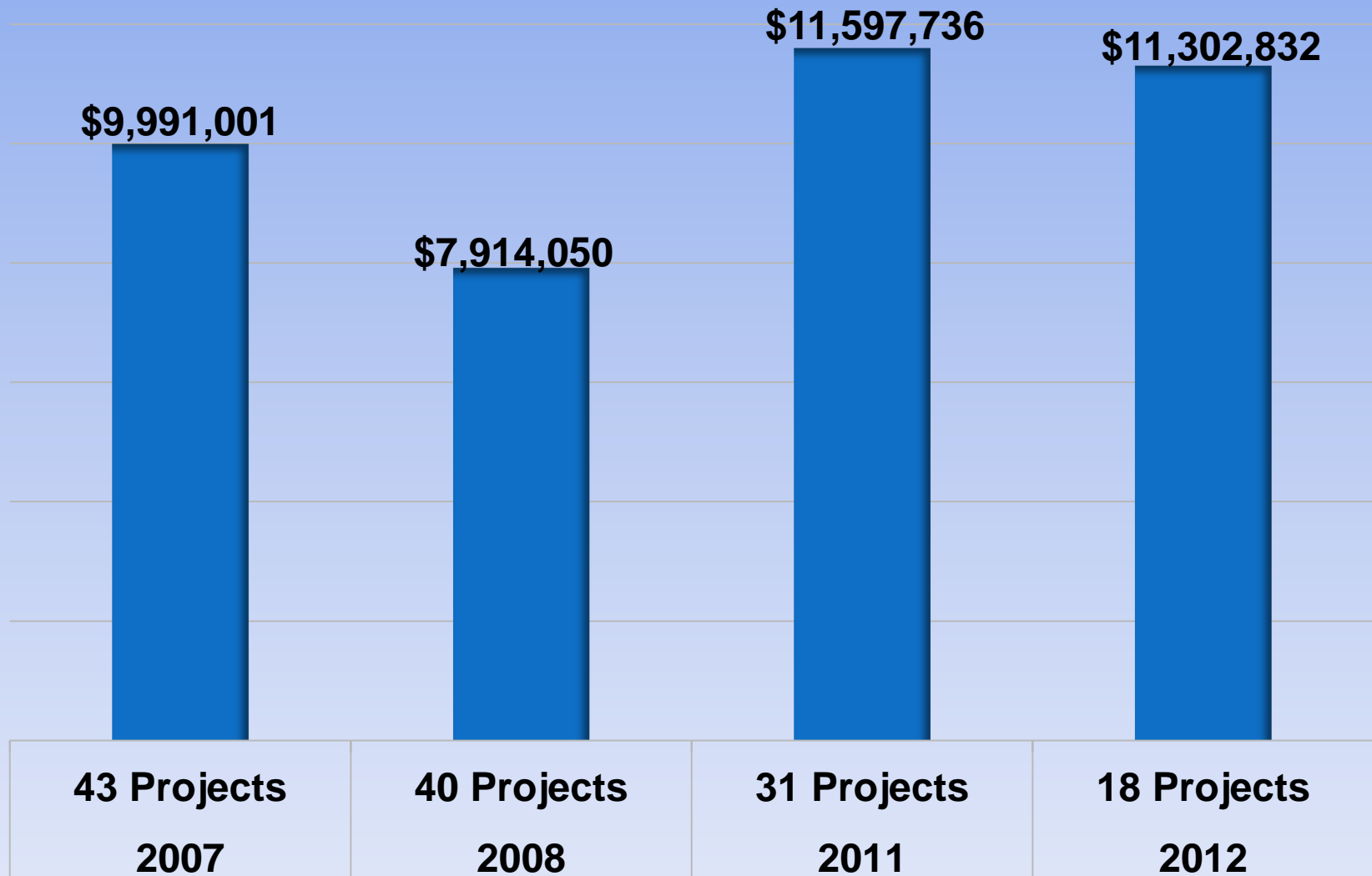
- **Ensure dischargers cover staff oversight costs of SEPs**
- **Results vary by Regional Board**

+ Improvement Needed

Overarching Goal

- **Improve quality of SEPs**
- **Metrics Analyzed**
 - ❑ Number of projects
 - ❑ Dollar amount of projects
 - ❑ Trends in project types
 - ❑ Direct vs. Indirect nature of water quality benefits
 - ❑ High vs. low level of water quality benefits

Total Dollar Amount & Number of Projects



Trends by Type of Project

- **Increasing**

- ☐ Non-Required Upgrades (Enhanced Compliance Actions)
- ☐ Private Lateral Replacements
- ☐ Low-Impact Development

- **Decreasing**

- ☐ Restoration
- ☐ Education
- ☐ Monitoring/Studies

Direct vs. Indirect Water Quality Benefits

- Projects with direct Water Quality benefits

✓ **Trending Upward**

High vs. Low Water Quality Benefits

- Projects with high Water Quality benefits.

✓ **Trending Upward**

SEP Policy 2013 Report Card

#1 Ensure Proper Use of SEP Funds		✓			
#2 Limit SEP Amounts to 50% of Total Liability		✓			
#3 Increase Accountability for Proper Allocation and Use of Funds		✓			
#4 Increase Public Reporting of SEP Status Information		✓			
#5 Increase Oversight on Placement of Settlement Funds into Accounts Not Authorized by Statute or the State Water Board		✓			
#6 Ensure Dischargers Cover Oversight Costs of SEPs		+			
Overarching Goal: Improve Quality of SEPs		↑			